

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

AMY L PRESLICKA

Claimant

APPEAL NO. 12A-UI-07284-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BOCKENSTEDT EXCAVATING INC

Employer

OC: 05/20/12

Claimant: Respondent (4)

Section 96.5(1) – Quit

STATEMENT OF THE CASE:

The employer, Bockenstedt Excavating, Inc. (Bockenstedt), filed an appeal from a decision dated June 13, 2012, reference 01. The decision allowed benefits to the claimant, Amy. After due notice was issued a hearing was held by telephone conference call on July 12, 2012. The claimant participated on her own behalf. The employer participated by Owner Andrew Bockenstedt.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer.

FINDINGS OF FACT:

Amy Preslicka was employed by Bockenstedt from February 7, 2011 until June 17, 2012. She was hired as a full-time office manager but was changed to part-time April 20, 2012, because of a slowdown in the business. Owner Andrew Bockenstedt told her she might want to look for a full-time job because there was very little likelihood his business would pick up to the point where she could return to full-time.

Ms. Preslicka had filed a claim for unemployment benefits with an effective date of May 20, 2012, because there were weeks in which there was no work at all with Bockenstedt. She received benefits for the two-week period ending June 2, 2012, and then began a full-time job at Children's Center for Therapy June 11, 2012. The initial findings in this case was that she was laid off for lack of work but the business was not permanently closed.

At the fact-finding interview for this case Ms. Preslicka was told by the interviewer the employer had responded to the notice of claim by stating she had refused an offer of work but was still employed part-time. She became upset, feeling she had been "stabbed in the back" by Mr. Bockenstedt and quit. An e-mail was sent, which the employer never received, and she then put her office key and a bank "fob" in a plastic bag and tossed it over the locked chain-link fence by the office.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-1-a provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department. But the individual shall not be disqualified if the department finds that:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

871 IAC 24.26(1) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

The claimant quit because she had obtained a full-time job when her position with the employer had been reduced to part-time with no guarantee of hours. This was also a substantial change in the contract of hire which is also good cause attributable to the employer for quitting.

The claimant is entitled to benefits for the period from May 20 through June 16, 2012, when she had been laid off from her full-time position. She officially quit when she obtained new employment. Bockenstedt is not liable for any benefits paid after June 17, 2012.

DECISION:

The representative's decision of June 13, 2012, reference 01, is modified in favor of the appellant. Amy Preslicka is qualified for benefits provided she is otherwise eligible from May 20 through June 16, 2012. The employer's account will not be charged with benefits paid after June 17, 2012.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs